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# HOUSE BILL No. 1738

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-7; IC 5-14.

**Synopsis:** Public records and open meetings. Allows a member of a governmental body to participate in a public meeting by telephone or video conferencing. Prohibits the public access counselor from issuing an advisory opinion or a written response to an informal inquiry concerning a record or meeting that is: (1) the subject of a pending lawsuit under the open door law or the access to public records law; or (2) the subject of discovery in pending litigation in any court. Requires a public agency to charge the actual cost of copying a videotape, an audiotape, a photograph, or similar media. Allows a public agency to collect a postage expense that exceeds \$1 for mailing public records. Requires memoranda to be available within 48 hours after the close of the meeting. Requires minutes to be available to the public in draft or final form. Specifies that serial meetings are public meetings. Prohibits a public agency from giving a private person or entity custody of a public record for the purpose of avoiding disclosure of the record. Excludes certain information from the "deliberative material" exemption from the public records law. Makes other changes in the public access and public records laws. Makes technical amendments.

**Effective:** July 1, 2001.

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## Kruzan

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January 17, 2001, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1738

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 3-7-26-9 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE JULY 1, 2001]: Sec. 9. Except as provided in section 11
- 3 of this chapter, the commission shall act under ~~IC 5-14-3-3(g)~~
- 4 **IC 5-14-3-3(i)** to adopt a nondiscriminatory uniform policy regarding
- 5 the duplication of a complete and undivided compilation of the
- 6 information all counties have provided to the statewide voter file. The
- 7 commission and the election division may not provide any division of
- 8 the compilation.
- 9 SECTION 2. IC 3-7-27-6 IS AMENDED TO READ AS FOLLOWS
- 10 [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) As required under 42 U.S.C.
- 11 1973gg-6(i), a county voter registration office shall retain records
- 12 concerning the implementation of programs and activities conducted
- 13 for the purpose of ensuring the accuracy and currency of the voter
- 14 registration list. These records include the following:
- 15 (1) Lists of names and addresses of voters who were sent notices
- 16 under the voter list maintenance program.
- 17 (2) Information concerning whether a voter has responded to a

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notice described by subdivision (1) as of the date the inspection of the record is made.

(b) The county voter registration office shall retain the records described by this section for at least two (2) years. Except for records concerning declinations to register to vote or that indicate the identity of a voter registration agency where a person registered, the county voter registration office shall make the records available for public inspection and photocopying at a reasonable cost as provided in IC 5-14-3.

(c) This subsection applies to a county that maintains voter registration information on a computerized system. In accordance with ~~IC 5-14-3-3(g)~~ **IC 5-14-3-3(i)** and notwithstanding any other statute, a county voter registration office shall, with regard to voter registration information on a computerized system, act in accordance with a nondiscriminatory uniform policy adopted by the county election board. The policy must either permit a person to duplicate or obtain a duplicate copy of a computer tape, computer disc, microfilm, or other similar record system that contains this voter registration information or not permit the person to duplicate or obtain a duplicate copy of the information.

(d) A person who requests computerized voter registration information under subsection (c) must provide a written statement that the person will not:

(1) use the information to solicit merchandise, goods, services, or subscriptions; or

(2) sell, loan, give away, or otherwise deliver the information obtained by the request to any other person;

for a purpose other than political activities or political fundraising activities.

(e) Publication of information obtained under subsection (d) in a news broadcast or newspaper is not prohibited.

SECTION 3. IC 3-7-28-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. Notwithstanding ~~IC 5-14-3-4(e)~~, **IC 5-14-3-3(f)**, additional copies of the registration lists prepared for the inspectors of each precinct shall be kept open to the public for inspection and copying in the same manner as other public records under IC 5-14-3 at the office of the circuit court clerk or board of registration as soon as the registration lists are completed.

SECTION 4. IC 5-14-1.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. For the purposes of this chapter:

(a) "Public agency" means the following:

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(1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.

(3) Any entity which is subject to either:

(A) budget review by either the state board of tax commissioners or the governing body of a county, city, town, township, or school corporation; or

(B) audit by the state board of accounts.

(4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are:

(1) a public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. An agent or agents appointed by a school corporation to conduct collective bargaining on behalf of that school corporation does not constitute a governing body for purposes of this chapter.

(c) "Meeting":

(1) means:

(A) a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business; **or**

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**(B) a series of gatherings of less than a majority of members of the governing body of a public agency that are held within any forty-five (45) day period if:**

- (i) each gathering concerns the same subject matter;**
- (ii) each gathering is for the purpose of taking official action upon public business; and**
- (iii) the total number of members attending the gatherings equals at least a majority of the members of the governing body; and**

**(2) It does not include:**

- (+) (A) any social or chance gathering not intended to avoid this chapter;**
- (2-) (B) any on-site inspection of any project or program;**
- (3-) (C) traveling to and attending meetings of organizations devoted to betterment of government; or**
- (4-) (D) a caucus.**

**(d) "Official action" means to:**

- (1) receive information;**
- (2) deliberate;**
- (3) make recommendations;**
- (4) establish policy;**
- (5) make decisions; or**
- (6) take final action.**

**(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.**

**(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose.**

**(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.**

**(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.**

**(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).**

**(j) "News media" means all newspapers qualified to receive legal advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.**

**(k) "Person" means an individual, a corporation, a limited liability**

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company, a partnership, an unincorporated association, or a governmental entity.

SECTION 5. IC 5-14-1.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 3.5. (a) This section applies to a meeting of a governing body at which at least a quorum of members of the governing body is physically present at the place where the meeting is conducted.**

**(b) A member of the governing body may participate in a meeting of the governing body by using a means of communication that permits:**

**(1) all other members of the governing body participating in the meeting; and**

**(2) all members of the public physically present at the place where the meeting is conducted;**

**to simultaneously communicate with each other during the meeting.**

**(c) A member who participates in a meeting under subsection (b) is considered to be present at the meeting.**

**(d) The memoranda of a meeting of a governing body must include, in addition to the information required by section 4(b) of this chapter, the name of:**

**(1) each member who was physically present at the place where the meeting was conducted;**

**(2) each member who participated in the meeting by using a means of communication described in subsection (b); and**

**(3) each member who was absent.**

SECTION 6. IC 5-14-1.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 4. (a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting. A rule, regulation, ordinance, or other final action adopted by reference to agenda number or item alone is void.**

**(b) As the meeting progresses, the following memoranda shall be kept:**

**(1) The date, time, and place of the meeting.**

**(2) The members of the governing body recorded as either present or absent.**

**(3) The general substance of all matters proposed, discussed, or decided.**

**(4) A record of all votes taken, by individual members if there is a roll call.**



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(5) Any additional information required under IC 5-1.5-2-2.5 or IC 20-12-63-7.

(c) The memoranda are to be available ~~within a reasonable period of time~~ **not later than forty-eight (48) hours** after the **close of the** meeting for the purpose of informing the public of the governing body's proceedings. ~~The Minutes, if any,~~ **whether in draft or final form**, are to be open for public inspection and copying. **Minutes that are in draft form shall be labeled "draft minutes".**

SECTION 7. IC 5-14-3-2, AS AMENDED BY P.L.256-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. ~~As used in this chapter:~~ **(a) The definitions in this section are used throughout this chapter:**

**(b)** "Copy" includes transcribing by handwriting, photocopying, xerography, duplicating machine, duplicating electronically stored data onto a disk, tape, drum, or any other medium of electronic data storage, and reproducing by any other means.

**(c)** "Direct cost" means one hundred five percent (105%) of the sum of the cost of:

- (1) the initial development of a program, if any;
- (2) the labor required to retrieve electronically stored data; and
- (3) any medium used for electronic output;

for providing a duplicate of electronically stored data onto a disk, tape, drum, or other medium of electronic data retrieval under section ~~8(g)~~ **8(h)** of this chapter, or for reprogramming a computer system under section 6(c) of this chapter.

**(d)** "Electronic map" means copyrighted data provided by a public agency from an electronic geographic information system.

**(e)** "Enhanced access" means the inspection of a public record by a person other than a governmental entity and that:

- (1) is by means of an electronic device other than an electronic device provided by a public agency in the office of the public agency; or
- (2) requires the compilation or creation of a list or report that does not result in the permanent electronic storage of the information.

**(f)** "Facsimile machine" means a machine that electronically transmits exact images through connection with a telephone network.

**(g)** "Inspect" includes the right to do the following:

- (1) Manually transcribe and make notes, abstracts, or memoranda.
- (2) In the case of tape recordings or other aural public records, to listen and manually transcribe or duplicate, or make notes, abstracts, or other memoranda from them.
- (3) In the case of public records available:

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- 1 (A) by enhanced access under section 3.5 of this chapter; or  
 2 (B) to a governmental entity under section 3(c)(2) of this  
 3 chapter;  
 4 to examine and copy the public records by use of an electronic  
 5 device.  
 6 (4) In the case of electronically stored data, to manually transcribe  
 7 and make notes, abstracts, or memoranda or to duplicate the data  
 8 onto a disk, tape, drum, or any other medium of electronic  
 9 storage.  
 10 **(h)** "Investigatory record" means information compiled in the course  
 11 of the investigation of a crime.  
 12 **(i)** "Patient" has the meaning set out in IC 16-18-2-272(d).  
 13 **(j)** "Person" means an individual, a corporation, a limited liability  
 14 company, a partnership, an unincorporated association, or a  
 15 governmental entity.  
 16 **(k)** "Provider" has the meaning set out in IC 16-18-2-295(a) and  
 17 includes employees of the state department of health or local boards of  
 18 health who create patient records at the request of another provider or  
 19 who are social workers and create records concerning the family  
 20 background of children who may need assistance.  
 21 **(l)** "Public agency" means the following:  
 22 (1) Any board, commission, department, division, bureau,  
 23 committee, agency, office, instrumentality, or authority, by  
 24 whatever name designated, exercising any part of the executive,  
 25 administrative, judicial, or legislative power of the state.  
 26 (2) Any:  
 27 (A) county, township, school corporation, city, or town, or any  
 28 board, commission, department, division, bureau, committee,  
 29 office, instrumentality, or authority of any county, township,  
 30 school corporation, city, or town;  
 31 (B) political subdivision (as defined by IC 36-1-2-13); or  
 32 (C) other entity, or any office thereof, by whatever name  
 33 designated, exercising in a limited geographical area the  
 34 executive, administrative, judicial, or legislative power of the  
 35 state or a delegated local governmental power.  
 36 (3) Any entity or office that is subject to:  
 37 (A) budget review by either the state board of tax  
 38 commissioners or the governing body of a county, city, town,  
 39 township, or school corporation; or  
 40 (B) an audit by the state board of accounts.  
 41 (4) Any building corporation of a political subdivision that issues  
 42 bonds for the purpose of constructing public facilities.

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(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcoholic beverage commission, conservation officers of the department of natural resources, and the security division of the state lottery commission.

(7) Any license branch staffed by employees of the bureau of motor vehicles commission under IC 9-16.

(8) The state lottery commission, including any department, division, or office of the commission.

(9) The Indiana gaming commission established under IC 4-33, including any department, division, or office of the commission.

(10) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

**(m)** "Public record" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, used, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

**(n)** "Standard-sized documents" includes all documents that can be mechanically reproduced (without mechanical reduction) on paper sized eight and one-half (8 1/2) inches by eleven (11) inches or eight and one-half (8 1/2) inches by fourteen (14) inches.

**(o)** "Trade secret" has the meaning set forth in IC 24-2-3-2.

**(p)** "Work product of an attorney" means information compiled by an attorney in reasonable anticipation of litigation and includes the attorney's:

(1) notes and statements taken during interviews of prospective witnesses; and

(2) legal research or records, correspondence, reports, or memoranda to the extent that each contains the attorney's opinions, theories, or conclusions.

This definition does not restrict the application of any exception under

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section 4 of this chapter.

SECTION 8. IC 5-14-3-3 IS AMENDED TO READ AS FOLLOWS  
[EFFECTIVE JULY 1, 2001]: Sec. 3. (a) Any person may inspect and  
copy the public records of any public agency during the regular  
business hours of the agency, except as provided in section 4 of this  
chapter. A request for inspection or copying must:

- (1) identify with reasonable particularity the record being  
requested; and
- (2) be, at the discretion of the agency, in writing on or in a form  
provided by the agency.

No request may be denied because the person making the request  
refuses to state the purpose of the request, unless such condition is  
required by other applicable statute.

(b) A public agency may not deny or interfere with the exercise of  
the right stated in subsection (a). The public agency shall either:

- (1) provide the requested copies to the person making the request;  
or
- (2) allow the person to make copies:
  - (A) on the agency's equipment; or
  - (B) on his own equipment.

(c) Notwithstanding subsections (a) and (b), a public agency may or  
may not do the following:

- (1) In accordance with a contract described in section 3.5 of this  
chapter, permit a person to inspect and copy through the use of  
enhanced access public records containing information owned by  
or entrusted to the public agency.
- (2) Permit a governmental entity to use an electronic device to  
inspect and copy public records containing information owned by  
or entrusted to the public agency.

(d) Except as provided in subsection (e), a public agency that  
maintains or contracts for the maintenance of public records in an  
electronic data storage system shall make reasonable efforts to provide  
to a person making a request a copy of all disclosable data contained  
in the records on paper, disk, tape, drum, or any other method of  
electronic retrieval if the medium requested is compatible with the  
agency's data storage system. This subsection does not apply to an  
electronic map (as defined by IC 5-14-3-2).

(e) A state agency may adopt a rule under IC 4-22-2, and a political  
subdivision may enact an ordinance, prescribing the conditions under  
which a person who receives information on disk or tape under  
subsection (d) may or may not use the information for commercial  
purposes, including to sell, advertise, or solicit the purchase of

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merchandise, goods, or services, or sell, loan, give away, or otherwise deliver the information obtained by the request to any other person (as defined in IC 5-14-3-2) for these purposes. Use of information received under subsection (d) in connection with the preparation or publication of news, for nonprofit activities, or for academic research is not prohibited. A person who uses information in a manner contrary to a rule or ordinance adopted under this subsection may be prohibited by the state agency or political subdivision from obtaining a copy or any further data under subsection (d).

**(f) Notwithstanding the other provisions of this section, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public by statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:**

**(1) A list of employees of a public agency.**

**(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.**

**(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:**

**(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or**

**(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.**

**A policy adopted under this subdivision must be uniform and may not discriminate among similarly situated commercial entities.**

**(g) A public agency may not enter into or renew a contract or an obligation:**

**(1) for the storage or copying of public records; or**

**(2) that requires the public to obtain a license or pay copyright royalties for obtaining the right to inspect and copy the records unless otherwise provided by applicable statute;**

**if the contract, obligation, license, or copyright unreasonably impairs**

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the right of the public to inspect and copy the agency's public records.

**(h) A public agency may not place or cause a public record to be placed in the custody of a private person or entity for the purpose of avoiding disclosure of the public record.**

~~(g)~~ **(i)** If this section conflicts with IC 3-7, the provisions of IC 3-7 apply.

SECTION 9. IC 5-14-3-3.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 3.1. (a) A public agency shall respond to a request that is made orally or a written request that is delivered in person not later than:**

**(1) the next business day; or**

**(2) twenty-four (24) hours;**

**after the request is received, whichever is later.**

**(b) A public agency shall respond to a written request that is:**

**(1) mailed;**

**(2) sent via facsimile; or**

**(3) sent by electronic mail;**

**not later than seven (7) days after the request is received.**

**(c) A public agency shall include the following information in a response to a request for records under subsections (a) and (b):**

**(1) The approximate copy fee, if any, and whether the fee must be provided before the copies of the public records will be produced.**

**(2) The name and title of the officer or employee of the public agency who is responsible for the disclosure or nondisclosure of public records for the agency.**

**(3) All of the following that apply to the request:**

**(A) A statement identifying the public records maintained by the agency that will be provided in response to the request and the estimated date the records will be produced.**

**(B) A statement indicating that the record request is denied and the record will be withheld because the record is confidential or nondisclosable, and the statutory authority for the statement that the record is confidential or nondisclosable.**

**(C) A statement that the public agency does not have a record that is responsive to the record request.**

**(D) A statement that the public agency may have records that are responsive to the request and is in the process of:**

**(i) reviewing the agency's files;**

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(ii) retrieving stored files; or

(iii) both items (i) and (ii);

in response to the request. The public agency shall also provide an additional response to the requestor on or before a specified date, a date that has been stated in the response required under this section, that informs the requestor of the progress on the request.

SECTION 10. IC 5-14-3-3.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3.2. (a) A denial of disclosure by a public agency occurs when the person making the request is physically present in the office of the agency, makes the request by telephone, or requests enhanced access to a document and:

(1) the person designated by the public agency as being responsible for public records release decisions refuses to permit inspection and copying of a public record when a request has been made; or

(2) twenty-four (24) hours elapse after any employee of the public agency refuses to permit inspection and copying of a public record when a request has been made;

whichever occurs first.

(b) If a person requests by mail, facsimile, or electronic mail a copy or copies of a public record, a denial of disclosure does not occur until seven (7) days have elapsed from the date the public agency receives the request.

(c) If a request is made orally, either in person or by telephone, a public agency may deny the request orally. However, if a request is initially made in writing, by facsimile, or through enhanced access, or if an oral request that has been denied is renewed in writing or by facsimile, a public agency may deny the request if:

(1) the denial is in writing or by facsimile; and

(2) the denial includes the following:

(A) A statement specifying the statutory authority for the public agency to withhold the record on the basis that the record is confidential or nondisclosable, as set forth in section 3.1(c)(3)(B) of this chapter.

(B) The name and title of the officer or employee of the public agency who is responsible for the disclosure or nondisclosure of public records for the agency as set forth in section 3.1(c)(2) of this chapter.

SECTION 11. IC 5-14-3-4, AS AMENDED BY P.L.37-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2001]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

- (1) Those declared confidential by state statute.
- (2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.
- (3) Those required to be kept confidential by federal law.
- (4) Records containing trade secrets.
- (5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is filed with or received by a public agency pursuant to state statute.
- (6) Information concerning research, including actual research documents, conducted under the auspices of an institution of higher education, including information:
  - (A) concerning any negotiations made with respect to the research; and
  - (B) received from another party involved in the research.
- (7) Grade transcripts and license examination scores obtained as part of a licensure process.
- (8) Those declared confidential by or under rules adopted by the supreme court of Indiana.
- (9) Patient medical records and charts created by a provider, unless the patient gives written consent under IC 16-39.
- (10) Application information declared confidential by the twenty-first century research and technology fund board under IC 4-4-5.1.

(b) Except as otherwise provided by subsection (a), the following public records shall be excepted from section 3 of this chapter at the discretion of a public agency:

- (1) Investigatory records of law enforcement agencies. However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of this chapter.
- (2) The work product of an attorney representing, pursuant to state employment or an appointment by a public agency:
  - (A) a public agency;
  - (B) the state; or
  - (C) an individual.
- (3) Test questions, scoring keys, and other examination data used in administering a licensing examination, examination for employment, or academic examination before the examination is

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given or if it is to be given again.

(4) Scores of tests if the person is identified by name and has not consented to the release of his scores.

(5) The following:

(A) Records relating to negotiations between the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions with industrial, research, or commercial prospects, if the records are created while negotiations are in progress.

(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making. **However, this subdivision does not apply to records or parts of records that are:**

**(A) statistical or factual tabulations or data; or**

**(B) final agency policy or determinations.**

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

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(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing systems, and other software that are owned by the public agency or entrusted to it and portions of electronic maps entrusted to a public agency by a utility.

(12) Records specifically prepared for discussion or developed during discussion in an executive session under IC 5-14-1.5-6.1. However, this subdivision does not apply to that information required to be available for inspection and copying under subdivision (8).

(13) The work product of the legislative services agency under personnel rules approved by the legislative council.

(14) The work product of individual members and the partisan staffs of the general assembly.

(15) The identity of a donor of a gift made to a public agency if:  
 (A) the donor requires nondisclosure of his identity as a condition of making the gift; or  
 (B) after the gift is made, the donor or a member of the donor's family requests nondisclosure.

(16) Library or archival records:

(A) which can be used to identify any library patron; or

(B) deposited with or acquired by a library upon a condition that the records be disclosed only:

(i) to qualified researchers;

(ii) after the passing of a period of years that is specified in the documents under which the deposit or acquisition is made; or

(iii) after the death of persons specified at the time of the acquisition or deposit.

However, nothing in this subdivision shall limit or affect

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contracts entered into by the Indiana state library pursuant to  
IC 4-1-6-8.

(17) The identity of any person who contacts the bureau of motor vehicles concerning the ability of a driver to operate a motor vehicle safely and the medical records and evaluations made by the bureau of motor vehicles staff or members of the driver licensing advisory committee. However, upon written request to the commissioner of the bureau of motor vehicles, the driver must be given copies of the driver's medical records and evaluations that concern the driver.

(18) School safety and security measures, plans, and systems, including emergency preparedness plans developed under 511 IAC 6.1-2-2.5.

(c) Notwithstanding section 3 of this chapter, a public agency is not required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

(1) A list of employees of a public agency.

(2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.

(3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:

(A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or

(B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) (c) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) (d) Notwithstanding any other law, a public record that is

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classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

~~(f)~~ **(e)** Notwithstanding subsection ~~(e)~~ **(d)** and section 7 of this chapter:

(1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or

(2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 12. IC 5-14-3-8, AS AMENDED BY P.L.151-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) For the purposes of this section, "state agency" has the meaning set forth in IC 4-13-1-1.

(b) Except as provided in this section, a public agency may not charge any fee under this chapter:

(1) to inspect a public record; or

(2) to search for, examine, or review a record to determine whether the record may be disclosed.

(c) The Indiana department of administration shall establish a uniform copying fee for the copying of one (1) page of a standard-sized document by state agencies. The fee may not exceed the average cost of copying records by state agencies or ten cents (\$0.10) per page, whichever is greater. A state agency may not collect more than the uniform copying fee for providing a copy of a public record. However, a state agency shall establish and collect a reasonable fee for copying nonstandard-sized documents.

(d) This subsection applies to a public agency that is not a state agency. The fiscal body (as defined in IC 36-1-2-6) of the public agency, or the governing body, if there is no fiscal body, shall establish a fee schedule for the certification, copying, or facsimile machine transmission of documents. The fee may not exceed the actual cost of certifying, copying, or facsimile transmission of the document by the agency and the fee must be uniform throughout the public agency and uniform to all purchasers. As used in this subsection, "actual cost" means the cost of paper and the per-page cost for use of copying or facsimile equipment and does not include labor costs or overhead costs.

**(e) The fee charged by a public agency for copying a videotape, an audiotape, a photograph, or other similar media may not exceed the actual cost of copying the media. If the public agency has the means to make the copies, "actual cost" means the cost of the tape or photographic paper and the cost of using the copying machine, and does not include labor or overhead costs. If the public agency**

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1 **must use an entity outside the agency to make the copies, "actual**  
 2 **cost" means the cost charged to the public agency by the entity for**  
 3 **the copies.**

4 **(f)** If:

5 (1) a person is entitled to a copy of a public record under this  
 6 chapter; and

7 (2) the public agency which is in possession of the record has  
 8 reasonable access to a machine capable of reproducing the public  
 9 record;

10 the public agency must provide at least one (1) copy of the public  
 11 record to the person. However, if a public agency does not have  
 12 reasonable access to a machine capable of reproducing the record or if  
 13 the person cannot reproduce the record by use of enhanced access  
 14 under section 3.5 of this chapter, the person is only entitled to inspect  
 15 and manually transcribe the record. A public agency may require that  
 16 the payment for copying costs be made in advance.

17 ~~(f)~~ **(g)** Notwithstanding subsection (b), (c), (d), ~~(g)~~, (h), ~~or~~ (i), **or (j)**,  
 18 a public agency shall collect any certification, copying, facsimile  
 19 machine transmission, or search fee that is specified by statute or is  
 20 ordered by a court.

21 ~~(g)~~ **(h)** Except as provided by subsection ~~(h)~~, **(i)**, for providing a  
 22 duplicate of a computer tape, computer disc, microfilm, or similar or  
 23 analogous record system containing information owned by the public  
 24 agency or entrusted to it, a public agency may charge a fee, uniform to  
 25 all purchasers, that does not exceed the sum of the following:

26 (1) The agency's direct cost of supplying the information in that  
 27 form.

28 (2) The standard cost for selling the same information to the  
 29 public in the form of a publication if the agency has published the  
 30 information and made the publication available for sale.

31 (3) In the case of the legislative services agency, a reasonable  
 32 percentage of the agency's direct cost of maintaining the system  
 33 in which the information is stored. However, the amount charged  
 34 by the legislative services agency under this subdivision may not  
 35 exceed the sum of the amounts it may charge under subdivisions  
 36 (1) and (2).

37 ~~(h)~~ **(i)** This subsection applies to the fee charged by a public agency  
 38 for providing enhanced access to a public record. A public agency may  
 39 charge any reasonable fee agreed on in the contract under section 3.5  
 40 of this chapter for providing enhanced access to public records.

41 ~~(i)~~ **(j)** This subsection applies to the fee charged by a public agency  
 42 for permitting a governmental entity to inspect public records by means

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of an electronic device. A public agency may charge any reasonable fee for the inspection of public records under this subsection or the public agency may waive any fee for the inspection.

~~(j)~~ **(k)** Except as provided in subsection ~~(k)~~, **(l)**, a public agency may charge a fee, uniform to all purchasers, for providing an electronic map that is based upon a reasonable percentage of the agency's direct cost of maintaining, upgrading, and enhancing the electronic map and for the direct cost of supplying the electronic map in the form requested by the purchaser. If the public agency is within a political subdivision having a fiscal body, the fee is subject to the approval of the fiscal body of the political subdivision.

~~(k)~~ **(l)** The fee charged by a public agency under subsection ~~(j)~~ **(k)** to cover costs for maintaining, upgrading, and enhancing an electronic map shall be waived by the public agency if the electronic map for which the fee is charged will be used for a noncommercial purpose, including the following:

- (1) Public agency program support.
- (2) Nonprofit activities.
- (3) Journalism.
- (4) Academic research.

**(m) A public agency may collect any postage expense that exceeds one dollar (\$1) for mailing public records in response to a public records request.**

SECTION 13. IC 5-14-3-8.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8.3. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section ~~8(h)~~ **8(i)** or ~~8(i)~~ **8(j)** of this chapter shall adopt an ordinance establishing an enhanced access fund. The ordinance must specify that the fund consists of fees collected under section ~~8(h)~~ **8(i)** or ~~8(i)~~ **8(j)** of this chapter. The fund shall be administered by the public agency or officer designated in the ordinance or resolution. Money in the fund must be appropriated and expended in the manner authorized in the ordinance.

(b) The fund is a dedicated fund with the following purposes:

- (1) The replacement, improvement, and expansion of capital expenditures.
- (2) The reimbursement of operating expenses incurred in providing enhanced access to public information.

SECTION 14. IC 5-14-3-8.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8.5. (a) The fiscal body of a political subdivision having a public agency that charges a fee under section ~~8(j)~~ **8(k)** of this chapter shall adopt an ordinance

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1 establishing an electronic map generation fund. The ordinance must  
 2 specify that the fund consists of fees collected under section ~~8(j)~~ **8(k)**  
 3 of this chapter. The fund shall be administered by the public agency  
 4 that collects the fees.

5 (b) The electronic map generation fund is a dedicated fund with the  
 6 following purposes:

7 (1) The maintenance, upgrading, and enhancement of the  
 8 electronic map.

9 (2) The reimbursement of expenses incurred by a public agency  
 10 in supplying an electronic map in the form requested by a  
 11 purchaser.

12 SECTION 15. IC 5-14-3-9, AS AMENDED BY P.L.191-1999,  
 13 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14 JULY 1, 2001]: Sec. 9. (a) ~~A denial of disclosure by a public agency~~  
 15 ~~occurs when the person making the request is physically present in the~~  
 16 ~~office of the agency; makes the request by telephone; or requests~~  
 17 ~~enhanced access to a document and:~~

18 (1) ~~the person designated by the public agency as being~~  
 19 ~~responsible for public records release decisions refuses to permit~~  
 20 ~~inspection and copying of a public record when a request has~~  
 21 ~~been made; or~~

22 (2) ~~twenty-four (24) hours elapse after any employee of the public~~  
 23 ~~agency refuses to permit inspection and copying of a public~~  
 24 ~~record when a request has been made;~~

25 ~~whichever occurs first:~~

26 (b) ~~If a person requests by mail or by facsimile a copy or copies of~~  
 27 ~~a public record; a denial of disclosure does not occur until seven (7)~~  
 28 ~~days have elapsed from the date the public agency receives the request:~~

29 (c) ~~If a request is made orally; either in person or by telephone; a~~  
 30 ~~public agency may deny the request orally. However, if a request~~  
 31 ~~initially is made in writing; by facsimile; or through enhanced access;~~  
 32 ~~or if an oral request that has been denied is renewed in writing or by~~  
 33 ~~facsimile; a public agency may deny the request if:~~

34 (1) ~~the denial is in writing or by facsimile; and~~

35 (2) ~~the denial includes:~~

36 (A) ~~a statement of the specific exemption or exemptions~~  
 37 ~~authorizing the withholding of all or part of the public record;~~  
 38 ~~and~~

39 (B) ~~the name and the title or position of the person responsible~~  
 40 ~~for the denial:~~

41 (d) ~~(a)~~ **(a)** A person who has been denied the right to inspect or copy a  
 42 public record by a public agency may file an action in the circuit or

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superior court of the county in which the denial occurred to compel the public agency to permit the person to inspect and copy the public record. Whenever an action is filed under this subsection, the public agency must notify each person who supplied any part of the public record at issue:

(1) that a request for release of the public record has been denied; and

(2) whether the denial was in compliance with an informal inquiry response or advisory opinion of the public access counselor.

Such persons are entitled to intervene in any litigation that results from the denial. The person who has been denied the right to inspect or copy need not allege or prove any special damage different from that suffered by the public at large.

~~(c)~~ **(b)** The court shall determine the matter de novo, with the burden of proof on the public agency to sustain its denial. If the issue in de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(a) of this chapter, the public agency meets its burden of proof under this subsection by establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit.

~~(b)~~ **(c)** If the issue in a de novo review under this section is whether a public agency properly denied access to a public record because the record is exempted under section 4(b) of this chapter:

(1) the public agency meets its burden of proof under this subsection by:

(A) proving that the record falls within any one (1) of the categories of exempted records under section 4(b) of this chapter; and

(B) establishing the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit; and

(2) a person requesting access to a public record meets the person's burden of proof under this subsection by proving that the denial of access is arbitrary or capricious.

~~(g)~~ **(d)** The court may review the public record in camera to determine whether any part of it may be withheld under this chapter.

~~(h)~~ **(e)** In any action filed under this section, a court shall award reasonable attorney fees, court costs, and other reasonable expenses of litigation to the prevailing party if:

(1) the plaintiff substantially prevails; or

(2) the defendant substantially prevails and the court finds the

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1 action was frivolous or vexatious.

2 The plaintiff is not eligible for the awarding of attorney's fees, court  
3 costs, and other reasonable expenses if the plaintiff filed the action  
4 without first seeking and receiving an informal inquiry response or  
5 advisory opinion from the public access counselor, unless the plaintiff  
6 can show the filing of the action was necessary because the denial of  
7 access to a public record under this chapter would prevent the plaintiff  
8 from presenting that public record to a public agency preparing to act  
9 on a matter of relevance to the public record whose disclosure was  
10 denied.

11 **(f)** A court shall expedite the hearing of an action filed under this  
12 section.

13 SECTION 16. IC 5-14-4-10, AS ADDED BY P.L.191-1999,  
14 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
15 JULY 1, 2001]: Sec. 10. **(a)** The counselor has the following powers  
16 and duties:

17 (1) To establish and administer a program to train public officials  
18 and educate the public on the rights of the public and the  
19 responsibilities of public agencies under the public access laws.  
20 The counselor may contract with a person or a public or private  
21 entity to fulfill the counselor's responsibility under this  
22 subdivision.

23 (2) To conduct research.

24 (3) To prepare interpretive and educational materials and  
25 programs in cooperation with the office of the attorney general.

26 (4) To distribute to newly elected or appointed public officials the  
27 public access laws and educational materials concerning the  
28 public access laws.

29 (5) To respond to informal inquiries made by the public and  
30 public agencies by telephone, in writing, in person, by facsimile,  
31 or by electronic mail concerning the public access laws.

32 (6) To issue advisory opinions to interpret the public access laws  
33 upon the request of a person or a public agency. ~~However, the~~  
34 ~~counselor may not issue an advisory opinion concerning a specific~~  
35 ~~matter with respect to which a lawsuit has been filed under~~  
36 ~~IC 5-14-1.5 or IC 5-14-3.~~

37 (7) To make recommendations to the general assembly  
38 concerning ways to improve public access.

39 **(b) The counselor may not respond under subsection (a)(5) to an**  
40 **informal inquiry concerning a specific matter:**

41 **(1) with respect to which a lawsuit has been filed under**  
42 **IC 5-14-1.5 or IC 5-14-3; or**



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1           **(2) that is the subject of discovery in pending litigation in any**  
2           **court.**  
3           SECTION 17. IC 5-14-5-10.1 IS ADDED TO THE INDIANA  
4           CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5           [EFFECTIVE JULY 1, 2001]: **Sec. 10.1. Notwithstanding sections 9**  
6           **and 10 of this chapter, the counselor may not issue an advisory**  
7           **opinion under this chapter concerning a record or a meeting that**  
8           **is the subject of:**  
9               **(1) a pending lawsuit under IC 5-14-1.5 or IC 5-14-3; or**  
10            **(2) discovery in pending litigation in any court.**

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